UNIVERSAL'S BAD FAITH

1980

JUNE	DiMuro advises Sheinberg that after RKO litigation Universal has "all King Kong merchandising rights." (PX 3)
JULY-AUG.	Sifuentes asks DiMuro if Universal "indeed did have the rights to merchandise King Kong and what that meant." (SH Dep 151) DiMuro advises that Universal has "superior" rights to merchandise King Kong, but Universal cannot use any pictures or artwork from the RKO or DDLC movies. (SH Dep. 151-156)
DEC.	Universal instructs licensee, Ben Cooper, to change his artwork; Universal "couldn't give him any rights to the DDL movie...[his artwork]... had to be a different 'King Kong'...". (SH Dep 164)

1981

SEPT.	Universal instructs Tiger to create its own artwork for King Kong products. (SH Dep 23-25)

1982

JAN.-FEB.	Sifuentes and Adler learn of Donkey Kong and suspect Tiger and Dunbar want to copy Donkey Kong. (SH. Dep. 73-76; 186-197)
FEB.	In architectural agreement for Florida Tours, Universal states: "It is understood the 'King Kong' figure shall be based on a living ape figure. In no event shall the figure be based on the King Kong figure used in any previously released motion picture." (DX 90)
MAR.	Sifuentes and DiMuro conclude Universal doesn't "have any rights [in King Kong] to license" and that Universal should cease licensing activities. (SH Dep. 197-200; 259-261; 273-275)
MAR.-APR.	Universal does not grant a license to Dunbar; Universal does not renew Cooper license. (SH Dep. 91-96; 196-200; 262)
MAR.-APR.	Universal decides to wait for the Tiger artwork before terminating license, because Tiger was "most likely going to copy the Donkey Kong game. And that would certainly be a material breach." (SH Dep 199-200; 261-263)

1982 (Cont'd.)

APR. 8	DiMuro advises Sheinberg that "RKO owns...the visual representation of the King Kong ape" and cautions that Universal's ape should not be "based on the character King Kong (i.e., RKO's ape)". DiMuro proposes guidelines for Universal's ape including that: "The Universal ape must be designed as an independent, original creation without reference to stills or other reproductions of RKO's ape or DeLaurentiis' ape." (DX 89)
APR. 27	Universal-Coleco Meeting: Universal is "very emphatic" that it owns trademark rights in King Kong. (Qz. Dep. 20-21) Universal repeatedly assures Coleco that its rights in King Kong are absolutely clear. (Sch. Dep. 36-37)
APR. 28 Telex	Universal claims that it "is the sole and exclusive owner of all rights in and to the name, title, character and story 'King Kong' and 'Kong'." (PX 14)
MAY 6	Universal-Coleco-Nintendo Meeting: Universal claims that it "owned all the rights to King Kong" and that the question of its rights is "open and shut." (Lin. STMT Sch. Dep. 36-37; 127-128)
MAY 8	Universal admits Tiger King Kong game is substantially similar to Donkey Kong and terminates license. (PX 17)
MAY 12	Universal secures license with Coleco for Donkey Kong products. (PX 19; Resp. to First Int. 7)
MAY 21	Sheinberg tells Lincoln that Universal litigation department "turned a profit" and Nintendo should start "saving money to pay its attorneys fees". (Lin. STMT)
JUNE 15	Universal secures from RKO an assignment of causes of action. (Regan Dep. 50-52)
JUNE 29 Complaint	Universal claims to be the "owner of all trade name, trademark, service mark and other rights in the name, character and story King Kong", as depicted in the 1933 and 1976 movies, and points to Tiger as licensee.
JULY 2 Press Release	Universal claims that it has "rights in the name, character and visual image of 'King Kong'." (DX 1)

UNIVERSAL'S BAD FAITH (Cont'd.)

1982 (Cont'd.)

JULY	Universal advises designer of Tours Attraction:- "...the King Kong character is not to be modeled after the ones used in either of the two motion pictures, but rather is to be based upon generic apes or an ape from a zoo or from wildlife. Joe [DiMuro] felt that we would have these rights from our ownership of the book, 'King Kong', and if that book is in [the] public domain (as we had previously successfully asserted), then the rights themselves would be in [the] public domain." (DX 79)
SUMMER	Universal tells scriptwriter of new King Kong movie to consult with an inhouse lawyer "to be sure that [Universal does] not inadvertantly infringe on any rights owned by RKO or [DDL]". (Sh. Dep. 72-78)
SEPT.	Universal instructs designer of Tours Attraction that "the 'King Kong' figure shall be an original design based on a living ape figure. In no event shall the figure be based on the King Kong figure used in any previously released motion picture." (DX 81)
OCT.	Universal claims that the secondary meaning attached to the "King Kong name, character and story is that the public associates the name King Kong, character (i.e. the King Kong gorilla) and the King Kong story (including the pictorial representation of the King Kong gorilla on top of a skyscraper, holding a woman captive) with the motion pictures entitled 'King Kong' and with the makers of those motion pictures..." (Resp. to First Int. 40)
NOV.	Sheinberg admits he cannot state what rights in King Kong Universal owns. (Sh Dep 267)

1983

JAN. 3 Letters to Nintendo Licensees	Universal states it is the "owner of the trademark and trade name rights in the name 'King Kong', the gorilla character 'King Kong', and certain pictorial and graphic depictions of the character 'King Kong' made famous by several motion pictures" and demands that Nintendo licensees "secure a license from Universal." (PX 32)

UNIVERSAL'S BAD FAITH (Cont'd.)

1982 (Cont'd.)

JAN. 4	Universal identifies the visual image of King Kong atop a large building in the 1933 and 1976 movies as elements of its mark infringed. (Resp. to Second Int. 11, 12)
JAN.	Universal tells Atari that it owns "the trademark and trade name rights" in King Kong and secures a license for Donkey Kong products. (DX 17, PX 36, Supp. Resp. to First Int. 7)
MAR.	Universal tells Milton Bradley that it has: "trademark and trade name rights in 'King Kong', the gorilla character 'King Kong' and graphic depictions of that character which have been made famous by several motion pictures." Universal urges Milton Bradley to: "give serious thought to the course of action [it] has undertaken, keeping in mind that others who are using the 'Donkey Kong' name to sell their products have obtained from Universal an appropriate license authorizing them to use this variation of the 'King Kong' trademark." (DX 64)
MAR.	Universal tells Ruby Spears that it has "property and trademark rights" in King Kong and secures an agreement with Ruby Spears for a Donkey Kong cartoon. (PX 41)
AUG.	Universal's counsel admits "it is difficult to put your finger sometimes on the trademark and what we are talking about." (Tr. 59)